

NOTICE OF EMERGENCY REGULATIONS

California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058 and 5058.3, in order to implement, interpret and make specific PC Section 5054, proposes to amend Section 3000, and adopt Sections 3359.1, 3359.2, 3359.3, 3359.4, 3359.5, 3359.6, and 3359.7 of the California Code of Regulations (CCR), Title 15, Division 3, concerning Medical Parole.

PUBLIC HEARING:

Date and Time: July 6, 2011 – 9:00 am to 10:00 am
Place: Department of Corrections and Rehabilitation
Kern/Colorado Room
1515 S Street – North Building
Sacramento, CA 95811
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close July 6, 2011 at 5:00 p.m. Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 324-6075; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 445-2269**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**Rosie Ruiz
Regulation and Policy Management Branch
Telephone (916) 445-2309**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Jay Virbel
Department of Corrections and Rehabilitation
(916) 445-1350**

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 – 17630.

FISCAL IMPACT STATEMENT:

- Cost or savings to any state agency:

Savings of approximately \$600,000 in current fiscal year with an extended estimated 12 month savings of \$7,200,000 in FY 2011/12. See Attachment A, Economic Fiscal Impact Statement, Medical Parole.

- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION:

The Department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared, and will make available, the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the

public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058.3 authorizes the Director to adopt, amend, or repeal emergency regulations conducted pursuant to GC Section 11340.

This action provides the following:

- Amends Section 3000 of the California Code of Regulations (CCR), Title 15, Division 3 by providing the definition for Medical Parolee.
- Adopts into the CCR new Sections 3359.1, 3359.2, 3359.3, 3359.4, 3359.5, 3359.6, and 3359.7, concerning Medical Parole.
- Brings the Department into compliance with the provisions of PC Section 3550 by adopting provisions that establish a process for Medical Parole. Medical Parole is a cost saving measure for the state by releasing permanently medically incapacitated inmates on Medical Parole when appropriate. This is designed to save the state the cost of health care of these inmates and associated guarding costs.
- Defines “permanently medically incapacitated” as described in statute.
- Establishes the criteria by which inmates may be eligible for consideration of Medical Parole, the processes by which inmates are placed on Medical Parole, and the circumstances in which Medical Parolees may be removed from Medical Parole.
- Establishes for use on a statewide basis, five new Department forms which are incorporated by reference into the regulations. A copy of each of the following forms has been made available for public review.
 - CDCR 7478 (12/10), Medical Parole Form
 - CDCR 7385-MP (03/11), Medical Parole Authorization for Release of Information
 - CDCR 1515-MP (02/11), Conditions of Medical Parole
 - CDCR 1650-MP (02/11), Medical Parole Initial Interview/Contact
 - CDCR 2219-MP (02/11), Medical Parole Status Change

Attachment A
Economic and Fiscal Impact Statement
Medical Parole

The actual long term, ongoing savings that will result from enactment of these regulations is completely dependent on the case factors and location of the individual inmate placed on Medical Parole, and cannot be estimated or projected on a general basis. Savings can be determined once an inmate is placed on Medical Parole, but will still vary depending on the case factors and location.

The costs, and resulting savings, are in two main categories of medical cost and medical guarding and transportation cost, both of which are described below.

Medical Costs

The average medical cost for an incapacitated inmate varies depending on the type of facility in which the inmate is housed:

- Nursing facility or outside hospital is \$3700 per day, or \$1.35 million per year.
- Correctional Treatment Center (CTC) is \$29 per day, or \$10,600 per year.
- CDCR Hospice is \$301 per day, or \$110,000 per year.

Inmates placed on Medical Parole could have their health care paid for by family members or be eligible for various federal benefits (Medicare, Medi-Cal, SSI, Veterans benefits) which would pay all or part of their medical costs.

Medical Guarding and Transportation

The cost of medical guarding and transportation for an incapacitated inmate varies as well:

- Nursing facility or outside hospital is dependent on a number of factors including the location and type of hospital room, the physical design of the facility, the number of inmate patients in the room/area, and the custody level of the inmate patients. The cost for coverage by one Correctional Officer is \$1040 per 24-hour day, or \$380,000 per year.
- Correctional Treatment Center (CTC) is determined by institution operating costs, including custody coverage. It is also determined by the need for medical guarding and transportation to outside medical appointments, for which the average cost is \$230 per inmate appointment.
- CDCR Hospice is determined by institution operating costs, including custody coverage.

Estimated Current Year Savings

There are nine inmates in the initial group being considered for Medical Parole. Because their specific locations and case factors are known, it is possible to estimate the maximum potential savings that will be realized when the inmates are placed on Medical Parole. Of the nine, six are at the Delano Long Term Care Facility, two are at Kentfield Rehabilitation Hospital, and one is at the California Medical Facility. (Note: Costs and potential savings are not included for the one inmate at CMF because his location upon Medical Parole placement is unknown at this time.)

	<u>Delano</u>	<u>Kentfield</u>	<u>Total</u>
Number of Inmates	6	2	8
<u>Medical</u>			
Costs ¹	\$ 666,000/month	\$ 222,000/month	\$ 888,000/month
Savings ²	\$ 333,000/month	\$ 111,000/month	\$ 444,000/month
<u>Medical Guarding</u>			
Number of C/O's reduced	4	1	5
Costs ³	\$ 124,000/month	\$ 31,200/month	\$ 156,000/month
Savings	\$ 124,000/month	\$ 31,200/month	\$ 156,000/month

Total Maximum Savings – June 2011 \$ 600,000/month

¹ Cost based on \$3700/day/inmate

² Potential savings based on presumption that the State will receive 50% federal reimbursement

³ Cost based on \$1040/day/Correctional Officer